



Legislation Text

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Int. No. 299-A

By Council Members Monserrate, Vallone Jr., Addabbo, Avella, Gentile, Gerson, Koppell, Martinez, Nelson, Rivera, Sears, Liu, Clarke, Gennaro, Weprin, McMahon, Jackson, Gonzalez and The Public Advocate (Ms. Gotbaum)

A Local Law to amend the administrative code of the city of New York, in relation to the removal of graffiti from commercial and residential buildings, and in relation to establishing a process whereby the city may clean graffiti from these buildings.

Be it enacted by the Council as follows:

Section 1. Legislative Findings and Intent.

The City Council finds that graffiti is a public nuisance, one that degrades the quality of life in neighborhoods and communities across the city. Graffiti creates an atmosphere of neglect, inviting criminal activity and contributing to a feeling of disorderliness and fear.

In light of these considerations, it is important that graffiti in public view be cleaned as quickly as possible, while respecting property rights and First Amendment free speech rights.

The goal of this legislation is to accommodate these important interests and to craft a solution to the City's graffiti problem that both adequately addresses the need to rid our communities of graffiti as well as protect our important freedoms. By imposing fines against the owners of certain property who fail to remove graffiti from their premises, coupled with granting to the City the ability to clean graffiti in public view from commercial and residential buildings, after an adequate notification process to property owners of such buildings, this legislation will improve the quality of life for our residents.

§ 2. The administrative code of the city of New York is amended by adding a new section 10-117.3 to read as follows:

§10-117.3 Remedies for failure to remove graffiti from certain premises.

a. Definitions. For purposes of this section, the following terms shall have the following meanings:

1. "Graffiti" means any letter, word, name, number, symbol, slogan, message, drawing, picture, writing or other mark of any kind visible to the public from a public place that is drawn, painted, chiseled, scratched, or etched on a commercial building or residential building, or any portion thereof, including fencing, that is not consented to by the owner of the commercial building or residential building. There shall be a rebuttable presumption that such letter, word, name, number, symbol, slogan, message, drawing, picture, writing or other mark of any kind is not consented to by the owner. Such presumption may be rebutted in any proceeding ~~in~~

pursuant to this section.

2. “Commercial building” means any building that is used, or any building a portion of which is used, for buying, selling or otherwise providing goods or services, or for other lawful business, commercial, professional services or manufacturing activities.

3. “Residential building” means any building containing one or more dwelling units.

4. “Public place” means a place to which the public or a substantial group of persons has access including, but not limited to, any highway, street, road, sidewalk, parking area, plaza, shopping area, place of amusement, playground, park, beach or transportation facility.

b. Duty to keep property free of graffiti. The owner of every commercial building and residential building shall keep and cause to be kept such building free of all graffiti.

c. Availability of city funds; graffiti removal through written consent. Subject to the availability of annual appropriations, the mayor, through the community assistance unit, shall provide graffiti removal services to abate graffiti on commercial buildings and residential buildings without charge to the property owner if the property owner first executes a written consent and a waiver of liability in the form prescribed by the mayor.

d. Failure to remove graffiti from property. Notice to remove graffiti from a commercial or residential building shall be [served by an agency designated by the mayor in the manner prescribed in paragraph two of subdivision d of section 1404 of the charter](#). Such written notice shall, at a minimum: (1) describe the city’s graffiti abatement program and the resources available to the property owner to abate graffiti; (2) indicate that if the owner of a commercial or residential building fails to remove such graffiti within sixty days of receipt of such notice, then the city may cause such graffiti to be removed; and (3) for a written notice involving residential buildings containing six or more dwelling units or commercial buildings, further indicate that the failure to remove the graffiti within sixty days of receipt of the notice shall result in the imposition of a fine as set forth in subdivision e of this section.

e. Penalty for failure to remove graffiti from residential buildings containing six or more dwelling units or commercial buildings. The owner of a residential building of six or more units or a commercial building who has been given written notice to remove graffiti from such building, and who fails to remove such graffiti within sixty days of receipt of such notice, shall be liable for a civil penalty of not less than one hundred fifty dollars nor more than three hundred dollars. Such civil penalty may be recovered in a proceeding before the environmental control board. The owner of a residential building containing six or more dwelling units or a commercial building shall not be liable for a civil penalty if, within sixty days of receipt of such notice, such owner can demonstrate that the owner has contacted the mayor’s community assistance unit, through a call to 311, with regard to providing graffiti removal services with respect to the graffiti that was the subject of the notice, and has executed a written consent and a waiver of liability in the form

prescribed by the mayor with respect to such graffiti. Notwithstanding the foregoing, a property shall not be fined more than once in any six-month period, and summonses shall not be issued between November 1 and March 31.

f. Removal of graffiti from property through nuisance abatement proceedings.

1. Whenever the owner of a commercial building or a residential building fails to accept the city's graffiti removal services after the city has attempted in good faith to obtain written consent and a waiver of liability from the owner for such services, and the property owner fails to remove such graffiti within sixty days of receiving a notice to remove the graffiti, the city may serve the owner of the commercial building or residential building a notice of nuisance abatement. The notice shall be served on the owner by an agency designated by the mayor in the manner prescribed in paragraph two of subdivision d of section 1404 of the charter. The notice, at a minimum, shall indicate the following:

(a) That the city of New York has determined that the property has become a nuisance because of graffiti on the property.

(b) The address of the property and the location on the property that has become a nuisance.

(c) That unless the property owner removes the graffiti, files a written consent and waiver of liability consenting to receive, without charge, graffiti removal services from the city, or submits to the city a written request for a hearing to contest the city's determination within thirty days of the date of the service of notice of nuisance abatement, the property owner will be deemed to have given permission to the city to enter or access the property and use the means it determines appropriate to remove or conceal the graffiti at the specified location.

(d) That if a property owner requests a hearing, the property owner may contest the determination that the property has become a nuisance.

(e) That this notice shall be deemed to provide the city with authority to work on as much of the property as necessary to remove or conceal the graffiti, and that the city is not responsible for removing or concealing the graffiti to the property owner's satisfaction.

2. Upon the property owner's failure to remove the graffiti, to file a written consent and a waiver of liability consenting to receive, without charge, graffiti removal services from the city, or to submit to the city a written request for a hearing to dispute the determination that the property identified in the notice has become a nuisance because of graffiti within thirty days of the date of the service of the notice of nuisance abatement, the city may enter or access the property specified in the notice and abate the nuisance by removing or concealing the graffiti.

3. Upon receipt of a timely request for a hearing, a hearing shall be held before the environmental control board within thirty days of receiving the request.

4. Upon a finding of a hearing officer of the environmental control board that the property has become a nuisance because of graffiti

the city may enter or access the property specified in the notice and abate the nuisance by removing or concealing the graffiti.

5. In no case shall the city be required to clean, paint, or repair any area more extensive than where the graffiti is located.

§ 3. This local law shall take effect 90 days after its enactment.